

109TH CONGRESS
1ST SESSION

S. 803

To amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to provide parity with respect to substance abuse treatment benefits under group health plans and health insurance coverage.

IN THE SENATE OF THE UNITED STATES

APRIL 14, 2005

Mr. COLEMAN (for himself and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to provide parity with respect to substance abuse treatment benefits under group health plans and health insurance coverage.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Help Expand Access
5 to Recovery and Treatment Act of 2005” or the “HEART
6 Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Substance abuse, if left untreated, is a med-
4 ical emergency and a private and public health cri-
5 sis.

6 (2) Nothing in this Act should be construed as
7 prohibiting application of the concept of parity to
8 substance abuse treatment provided by faith-based
9 treatment providers.

10 **SEC. 3. PARITY IN SUBSTANCE ABUSE TREATMENT BENE-**
11 **FITS.**

12 (a) GROUP HEALTH PLANS.—

13 (1) PUBLIC HEALTH SERVICE ACT AMEND-
14 MENTS.—

15 (A) IN GENERAL.—Subpart 2 of part A of
16 title XXVII of the Public Health Service Act
17 (42 U.S.C. 300gg–4 et seq.) is amended by
18 adding at the end the following new section:

19 **“SEC. 2707. PARITY IN THE APPLICATION OF TREATMENT**
20 **LIMITATIONS AND FINANCIAL REQUIRE-**
21 **MENTS TO SUBSTANCE ABUSE TREATMENT**
22 **BENEFITS.**

23 “(a) IN GENERAL.—In the case of a group health
24 plan (or health insurance coverage offered in connection
25 with such a plan) that provides both medical and surgical
26 benefits and substance abuse treatment benefits, the plan

1 or coverage shall not impose treatment limitations or fi-
 2 nancial requirements on the substance abuse treatment
 3 benefits unless similar limitations or requirements are im-
 4 posed for medical and surgical benefits.

5 “(b) CONSTRUCTION.—Nothing in this section shall
 6 be construed—

7 “(1) as requiring a group health plan (or health
 8 insurance coverage offered in connection with such a
 9 plan) to provide any substance abuse treatment ben-
 10 efits; or

11 “(2) to prevent a group health plan or a health
 12 insurance issuer offering group health insurance cov-
 13 erage from negotiating the level and type of reim-
 14 bursement with a provider for care provided in ac-
 15 cordance with this section.

16 “(c) EXEMPTIONS.—

17 “(1) SMALL EMPLOYER EXEMPTION.—

18 “(A) IN GENERAL.—This section shall not
 19 apply to any group health plan (and group
 20 health insurance coverage offered in connection
 21 with a group health plan) for any plan year of
 22 a small employer.

23 “(B) SMALL EMPLOYER.—For purposes of
 24 subparagraph (A), the term ‘small employer’
 25 means, in connection with a group health plan

1 with respect to a calendar year and a plan year,
2 an employer who employed an average of at
3 least 2 but not more than 50 employees on
4 business days during the preceding calendar
5 year and who employs at least 2 employees on
6 the first day of the plan year.

7 “(C) APPLICATION OF CERTAIN RULES IN
8 DETERMINATION OF EMPLOYER SIZE.—For
9 purposes of this paragraph—

10 “(i) APPLICATION OF AGGREGATION
11 RULE FOR EMPLOYERS.—Rules similar to
12 the rules under subsections (b), (c), (m),
13 and (o) of section 414 of the Internal Rev-
14 enue Code of 1986 shall apply for purposes
15 of treating persons as a single employer.

16 “(ii) EMPLOYERS NOT IN EXISTENCE
17 IN PRECEDING YEAR.—In the case of an
18 employer which was not in existence
19 throughout the preceding calendar year,
20 the determination of whether such em-
21 ployer is a small employer shall be based
22 on the average number of employees that
23 it is reasonably expected such employer
24 will employ on business days in the current
25 calendar year.

1 “(iii) PREDECESSORS.—Any reference
 2 in this paragraph to an employer shall in-
 3 clude a reference to any predecessor of
 4 such employer.

5 “(2) INCREASED COST EXEMPTION.—This sec-
 6 tion shall not apply with respect to a group health
 7 plan (or health insurance coverage offered in connec-
 8 tion with a group health plan) if the application of
 9 this section to such plan (or to such coverage) re-
 10 sults in an increase in the cost under the plan (or
 11 for such coverage) of at least 1 percent.

12 “(d) SEPARATE APPLICATION TO EACH OPTION OF-
 13 FERED.—In the case of a group health plan that offers
 14 a participant or beneficiary 2 or more benefit package op-
 15 tions under the plan, the requirements of this section shall
 16 be applied separately with respect to each such option.

17 “(e) DEFINITIONS.—For purposes of this section:

18 “(1) TREATMENT LIMITATION.—The term
 19 ‘treatment limitation’ means, with respect to benefits
 20 under a group health plan or health insurance cov-
 21 erage, any day or visit limits imposed on coverage of
 22 benefits under the plan or coverage during a period
 23 of time.

24 “(2) FINANCIAL REQUIREMENT.—The term ‘fi-
 25 nancial requirement’ means, with respect to benefits

1 under a group health plan or health insurance cov-
 2 erage, any deductible, coinsurance, or cost-sharing
 3 or an annual or lifetime dollar limit imposed with re-
 4 spect to the benefits under the plan or coverage.

5 “(3) MEDICAL OR SURGICAL BENEFITS.—The
 6 term ‘medical or surgical benefits’ means benefits
 7 with respect to medical or surgical services, as de-
 8 fined under the terms of the plan or coverage (as the
 9 case may be), but does not include substance abuse
 10 treatment benefits.

11 “(4) SUBSTANCE ABUSE TREATMENT BENE-
 12 FITS.—The term ‘substance abuse treatment bene-
 13 fits’ means benefits with respect to substance abuse
 14 treatment services.

15 “(5) SUBSTANCE ABUSE TREATMENT SERV-
 16 ICES.—The term ‘substance abuse treatment serv-
 17 ices’ means any of the following items and services
 18 provided for the treatment of substance abuse:

19 “(A) Inpatient treatment, including detoxi-
 20 fication.

21 “(B) Nonhospital residential treatment.

22 “(C) Outpatient treatment, including
 23 screening and assessment, medication manage-
 24 ment, individual, group, and family counseling,
 25 and relapse prevention.

1 “(D) Prevention services, including health
 2 education and individual and group counseling
 3 to encourage the reduction of risk factors for
 4 substance abuse.

5 “(6) SUBSTANCE ABUSE.—The term ‘substance
 6 abuse’ includes chemical dependency.

7 “(f) NOTICE.—A group health plan under this part
 8 shall comply with the notice requirement under section
 9 714(f) of the Employee Retirement Income Security Act
 10 of 1974 with respect to the requirements of this section
 11 as if such section applied to such plan.”.

12 (B) CONFORMING AMENDMENT.—Section
 13 2723(c) of such Act (42 U.S.C. 300gg-23(c)) is
 14 amended by striking “section 2704” and insert-
 15 ing “sections 2704 and 2707”.

16 (2) ERISA AMENDMENTS.—

17 (A) IN GENERAL.—Subpart B of part 7 of
 18 subtitle B of title I of the Employee Retirement
 19 Income Security Act of 1974 (29 U.S.C. 1185
 20 et seq.) is amended by adding at the end the
 21 following new section:

1 **“SEC. 714. PARITY IN THE APPLICATION OF TREATMENT**
 2 **LIMITATIONS AND FINANCIAL REQUIRE-**
 3 **MENTS TO SUBSTANCE ABUSE TREATMENT**
 4 **BENEFITS.**

5 “(a) IN GENERAL.—In the case of a group health
 6 plan (or health insurance coverage offered in connection
 7 with such a plan) that provides both medical and surgical
 8 benefits and substance abuse treatment benefits, the plan
 9 or coverage shall not impose treatment limitations or fi-
 10 nancial requirements on the substance abuse treatment
 11 benefits unless similar limitations or requirements are im-
 12 posed for medical and surgical benefits.

13 “(b) CONSTRUCTION.—Nothing in this section shall
 14 be construed—

15 “(1) as requiring a group health plan (or health
 16 insurance coverage offered in connection with such a
 17 plan) to provide any substance abuse treatment ben-
 18 efits; or

19 “(2) to prevent a group health plan or a health
 20 insurance issuer offering group health insurance cov-
 21 erage from negotiating the level and type of reim-
 22 bursement with a provider for care provided in ac-
 23 cordance with this section.

24 “(c) EXEMPTIONS.—

25 “(1) SMALL EMPLOYER EXEMPTION.—

1 “(A) IN GENERAL.—This section shall not
 2 apply to any group health plan (and group
 3 health insurance coverage offered in connection
 4 with a group health plan) for any plan year of
 5 a small employer.

6 “(B) SMALL EMPLOYER.—For purposes of
 7 subparagraph (A), the term ‘small employer’
 8 means, in connection with a group health plan
 9 with respect to a calendar year and a plan year,
 10 an employer who employed an average of at
 11 least 2 but not more than 50 employees on
 12 business days during the preceding calendar
 13 year and who employs at least 2 employees on
 14 the first day of the plan year.

15 “(C) APPLICATION OF CERTAIN RULES IN
 16 DETERMINATION OF EMPLOYER SIZE.—For
 17 purposes of this paragraph—

18 “(i) APPLICATION OF AGGREGATION
 19 RULE FOR EMPLOYERS.—Rules similar to
 20 the rules under subsections (b), (c), (m),
 21 and (o) of section 414 of the Internal Rev-
 22 enue Code of 1986 shall apply for purposes
 23 of treating persons as a single employer.

24 “(ii) EMPLOYERS NOT IN EXISTENCE
 25 IN PRECEDING YEAR.—In the case of an

1 employer which was not in existence
2 throughout the preceding calendar year,
3 the determination of whether such em-
4 ployer is a small employer shall be based
5 on the average number of employees that
6 it is reasonably expected such employer
7 will employ on business days in the current
8 calendar year.

9 “(iii) PREDECESSORS.—Any reference
10 in this paragraph to an employer shall in-
11 clude a reference to any predecessor of
12 such employer.

13 “(2) INCREASED COST EXEMPTION.—This sec-
14 tion shall not apply with respect to a group health
15 plan (or health insurance coverage offered in connec-
16 tion with a group health plan) if the application of
17 this section to such plan (or to such coverage) re-
18 sults in an increase in the cost under the plan (or
19 for such coverage) of at least 1 percent.

20 “(d) SEPARATE APPLICATION TO EACH OPTION OF-
21 FERED.—In the case of a group health plan that offers
22 a participant or beneficiary 2 or more benefit package op-
23 tions under the plan, the requirements of this section shall
24 be applied separately with respect to each such option.

25 “(e) DEFINITIONS.—For purposes of this section:

1 “(1) TREATMENT LIMITATION.—The term
2 ‘treatment limitation’ means, with respect to benefits
3 under a group health plan or health insurance cov-
4 erage, any day or visit limits imposed on coverage of
5 benefits under the plan or coverage during a period
6 of time.

7 “(2) FINANCIAL REQUIREMENT.—The term ‘fi-
8 nancial requirement’ means, with respect to benefits
9 under a group health plan or health insurance cov-
10 erage, any deductible, coinsurance, or cost-sharing
11 or an annual or lifetime dollar limit imposed with re-
12 spect to the benefits under the plan or coverage.

13 “(3) MEDICAL OR SURGICAL BENEFITS.—The
14 term ‘medical or surgical benefits’ means benefits
15 with respect to medical or surgical services, as de-
16 fined under the terms of the plan or coverage (as the
17 case may be), but does not include substance abuse
18 treatment benefits.

19 “(4) SUBSTANCE ABUSE TREATMENT BENE-
20 FITS.—The term ‘substance abuse treatment bene-
21 fits’ means benefits with respect to substance abuse
22 treatment services.

23 “(5) SUBSTANCE ABUSE TREATMENT SERV-
24 ICES.—The term ‘substance abuse treatment serv-

1 ices’ means any of the following items and services
2 provided for the treatment of substance abuse:

3 “(A) Inpatient treatment, including detoxi-
4 fication.

5 “(B) Nonhospital residential treatment.

6 “(C) Outpatient treatment, including
7 screening and assessment, medication manage-
8 ment, individual, group, and family counseling,
9 and relapse prevention.

10 “(D) Prevention services, including health
11 education and individual and group counseling
12 to encourage the reduction of risk factors for
13 substance abuse.

14 “(6) SUBSTANCE ABUSE.—The term ‘substance
15 abuse’ includes chemical dependency.

16 “(f) NOTICE UNDER GROUP HEALTH PLAN.—The
17 imposition of the requirements of this section shall be
18 treated as a material modification in the terms of the plan
19 described in section 102(a), for purposes of assuring no-
20 tice of such requirements under the plan; except that the
21 summary description required to be provided under section
22 104(b)(1) with respect to such modification shall be pro-
23 vided by not later than 60 days after the first day of the
24 first plan year in which such requirements apply.”.

25 (B) CONFORMING AMENDMENTS.—

1 (i) Section 731(c) of such Act (29
 2 U.S.C. 1191(c)) is amended by striking
 3 “section 711” and inserting “sections 711
 4 and 714”.

5 (ii) Section 732(a) of such Act (29
 6 U.S.C. 1191a(a)) is amended by striking
 7 “section 711” and inserting “sections 711
 8 and 714”.

9 (iii) The table of contents in section 1
 10 of such Act is amended by inserting after
 11 the item relating to section 713 the fol-
 12 lowing new item:

“714. Parity in the application of treatment limitations and financial require-
 ments to substance abuse treatment benefits”.

13 (3) INTERNAL REVENUE CODE AMEND-
 14 MENTS.—

15 (A) IN GENERAL.—Subchapter B of chap-
 16 ter 100 of the Internal Revenue Code of 1986
 17 (relating to other requirements) is amended by
 18 adding at the end the following new section:

19 **“SEC. 9813. PARITY IN THE APPLICATION OF TREATMENT**
 20 **LIMITATIONS AND FINANCIAL REQUIRE-**
 21 **MENTS TO SUBSTANCE ABUSE TREATMENT**
 22 **BENEFITS.**

23 “(a) IN GENERAL.—In the case of a group health
 24 plan that provides both medical and surgical benefits and

1 substance abuse treatment benefits, the plan shall not im-
 2 pose treatment limitations or financial requirements on
 3 the substance abuse treatment benefits unless similar limi-
 4 tations or requirements are imposed for medical and sur-
 5 gical benefits.

6 “(b) CONSTRUCTION.—Nothing in this section shall
 7 be construed—

8 “(1) as requiring a group health plan to provide
 9 any substance abuse treatment benefits; or

10 “(2) to prevent a group health plan from nego-
 11 tiating the level and type of reimbursement with a
 12 provider for care provided in accordance with this
 13 section.

14 “(c) EXEMPTIONS.—

15 “(1) SMALL EMPLOYER EXEMPTION.—

16 “(A) IN GENERAL.—This section shall not
 17 apply to any group health plan for any plan
 18 year of a small employer.

19 “(B) SMALL EMPLOYER.—For purposes of
 20 subparagraph (A), the term ‘small employer’
 21 means, in connection with a group health plan
 22 with respect to a calendar year and a plan year,
 23 an employer who employed an average of at
 24 least 2 but not more than 50 employees on
 25 business days during the preceding calendar

1 year and who employs at least 2 employees on
2 the first day of the plan year.

3 “(C) APPLICATION OF CERTAIN RULES IN
4 DETERMINATION OF EMPLOYER SIZE.—For
5 purposes of this paragraph—

6 “(i) APPLICATION OF AGGREGATION
7 RULE FOR EMPLOYERS.—Rules similar to
8 the rules under subsections (b), (c), (m),
9 and (o) of section 414 shall apply for pur-
10 poses of treating persons as a single em-
11 ployer.

12 “(ii) EMPLOYERS NOT IN EXISTENCE
13 IN PRECEDING YEAR.—In the case of an
14 employer which was not in existence
15 throughout the preceding calendar year,
16 the determination of whether such em-
17 ployer is a small employer shall be based
18 on the average number of employees that
19 it is reasonably expected such employer
20 will employ on business days in the current
21 calendar year.

22 “(iii) PREDECESSORS.—Any reference
23 in this paragraph to an employer shall in-
24 clude a reference to any predecessor of
25 such employer.

1 “(2) INCREASED COST EXEMPTION.—This sec-
 2 tion shall not apply with respect to a group health
 3 plan if the application of this section to such plan
 4 results in an increase in the cost under the plan of
 5 at least 1 percent.

6 “(d) SEPARATE APPLICATION TO EACH OPTION OF-
 7 FERED.—In the case of a group health plan that offers
 8 a participant or beneficiary 2 or more benefit package op-
 9 tions under the plan, the requirements of this section shall
 10 be applied separately with respect to each such option.

11 “(e) DEFINITIONS.—For purposes of this section:

12 “(1) TREATMENT LIMITATION.—The term
 13 ‘treatment limitation’ means, with respect to benefits
 14 under a group health plan, any day or visit limits
 15 imposed on coverage of benefits under the plan dur-
 16 ing a period of time.

17 “(2) FINANCIAL REQUIREMENT.—The term ‘fi-
 18 nancial requirement’ means, with respect to benefits
 19 under a group health plan, any deductible, coinsur-
 20 ance, or cost-sharing or an annual or lifetime dollar
 21 limit imposed with respect to the benefits under the
 22 plan.

23 “(3) MEDICAL OR SURGICAL BENEFITS.—The
 24 term ‘medical or surgical benefits’ means benefits
 25 with respect to medical or surgical services, as de-

1 fined under the terms of the plan, but does not in-
 2 clude substance abuse treatment benefits.

3 “(4) SUBSTANCE ABUSE TREATMENT BENE-
 4 FITS.—The term ‘substance abuse treatment bene-
 5 fits’ means benefits with respect to substance abuse
 6 treatment services.

7 “(5) SUBSTANCE ABUSE TREATMENT SERV-
 8 ICES.—The term ‘substance abuse treatment serv-
 9 ices’ means any of the following items and services
 10 provided for the treatment of substance abuse:

11 “(A) Inpatient treatment, including detoxi-
 12 fication.

13 “(B) Nonhospital residential treatment.

14 “(C) Outpatient treatment, including
 15 screening and assessment, medication manage-
 16 ment, individual, group, and family counseling,
 17 and relapse prevention.

18 “(D) Prevention services, including health
 19 education and individual and group counseling
 20 to encourage the reduction of risk factors for
 21 substance abuse.

22 “(6) SUBSTANCE ABUSE.—The term ‘substance
 23 abuse’ includes chemical dependency.”.

24 (B) CONFORMING AMENDMENTS.—

1 (i) Section 4980D(d)(1) of such Code
 2 is amended by striking “section 9811” and
 3 inserting “sections 9811 and 9813”.

4 (ii) The table of sections of sub-
 5 chapter B of chapter 100 of such Code is
 6 amended by adding at the end the fol-
 7 lowing new item:

“9813. Parity in the application of treatment limitations and financial require-
 ments to substance abuse treatment benefits”.

8 (b) INDIVIDUAL HEALTH INSURANCE.—

9 (1) AMENDMENT TO THE PUBLIC HEALTH
 10 SERVICE ACT.—Part B of title XXVII of the Public
 11 Health Service Act (42 U.S.C. 300gg–41 et seq.) is
 12 amended by inserting after section 2752 the fol-
 13 lowing new section:

14 **“SEC. 2753. PARITY IN THE APPLICATION OF TREATMENT**
 15 **LIMITATIONS AND FINANCIAL REQUIRE-**
 16 **MENTS TO SUBSTANCE ABUSE BENEFITS.**

17 “(a) IN GENERAL.—The provisions of section 2707
 18 (other than subsection (e)) shall apply to health insurance
 19 coverage offered by a health insurance issuer in the indi-
 20 vidual market in the same manner as it applies to health
 21 insurance coverage offered by a health insurance issuer
 22 in connection with a group health plan in the small or
 23 large group market.

1 “(b) NOTICE.—A health insurance issuer under this
 2 part shall comply with the notice requirement under sec-
 3 tion 714(f) of the Employee Retirement Income Security
 4 Act of 1974 with respect to the requirements referred to
 5 in subsection (a) as if such section applied to such issuer
 6 and such issuer were a group health plan.”.

7 (2) CONFORMING AMENDMENT.—Section
 8 2762(b)(2) of such Act (42 U.S.C. 300gg–62(b)(2))
 9 is amended by striking “section 2751” and inserting
 10 “sections 2751 and 2753”.

11 (c) EFFECTIVE DATES.—

12 (1) GROUP HEALTH PLANS.—Subject to para-
 13 graph (3), the amendments made by subsection (a)
 14 apply with respect to group health plans for plan
 15 years beginning on or after January 1, 2006.

16 (2) INDIVIDUAL HEALTH INSURANCE.—The
 17 amendments made by subsection (b) apply with re-
 18 spect to health insurance coverage offered, sold,
 19 issued, renewed, in effect, or operated in the indi-
 20 vidual market on or after January 1, 2006.

21 (3) SPECIAL RULE.—In the case of a group
 22 health plan maintained pursuant to 1 or more collec-
 23 tive bargaining agreements between employee rep-
 24 resentatives and 1 or more employers ratified before
 25 the date of enactment of this Act, the amendments

1 made by subsection (a) shall not apply to plan years
2 beginning before the later of—

3 (A) the date on which the last collective
4 bargaining agreements relating to the plan ter-
5 minates (determined without regard to any ex-
6 tension thereof agreed to after the date of en-
7 actment of this Act), or

8 (B) January 1, 2006.

9 For purposes of subparagraph (A), any plan amend-
10 ment made pursuant to a collective bargaining
11 agreement relating to the plan which amends the
12 plan solely to conform to any requirement added by
13 subsection (a) shall not be treated as a termination
14 of such collective bargaining agreement.

15 (d) COORDINATED REGULATIONS.—Section 104(1)
16 of the Health Insurance Portability and Accountability
17 Act of 1996 is amended by striking “this subtitle (and
18 the amendments made by this subtitle and section 401)”
19 and inserting “the provisions of part 7 of subtitle B of
20 title I of the Employee Retirement Income Security Act
21 of 1974, and the provisions of parts A and C of title
22 XXVII of the Public Health Service Act, and chapter 100
23 of the Internal Revenue Code of 1986”.

24 (e) PREEMPTION.—Nothing in the amendments made
25 by this section shall be construed to preempt any provision

1 of State law that provides protections to individuals that
2 are greater than the protections provided under such
3 amendments.

○